



Education Report: Confirmation of funding conditions for pay parity

To:	Hon Chris Hipkins, Minister of Education		
Date:	16 July 2021	Priority:	High
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Purpose of Report

The purpose of this paper is to confirm the conditions on funding for education and care services as part of implementing the Budget 2021 ECE pay parity initiative.

Summary

- 1 The recent passage of the Education and Training (Grants – Budget Measures) Amendment Bill means you have clear authority to confirm funding conditions relating to the pay parity initiative, the shape of which you outlined in May 2021 in one of the Budget 2021 announcements.
- 2 We seek to confirm key funding conditions for the initiative with you before they are specified in the ECE Funding Handbook.
- 3 The first condition is about reducing the number of pay steps required from the kindergarten teachers' collective agreement from six to five in return for opting into higher pay parity funding rates. The opt-in funding rates already announced at Budget would not change, while the sixth step would be required at a later date (likely 1 January 2023).
- 4 The Ministry considers there are both advantages and disadvantages to reducing the steps required but does not have a preferred view as to which one is best. However, reducing the pay steps would require Cabinet agreement by 20 August 2021. This gives SMS providers time to make system changes to allow the appropriate advance payment on 1 November to be paid to services opting into the initiative.
- 5 The remaining conditions outlined below complete the framework for the pay parity initiative. These reflect the kindergarten teachers' collective agreement as closely as possible to maintain pay fidelity between education and care teachers and those in kindergartens.
 - Progression between pay steps to be dependent on both time spent at the step and the teacher currently meeting the Teaching Council of Aotearoa New Zealand's *Standards | Ngā Paerawa*.

- Services opting into the initiative to include payment of compulsory Kiwisaver employer contributions on top of the designated pay step amounts.
- Limiting the definition of certificated teachers in opting in services to those *not* in a formal management, service leader or specialist role.
- Clarification that certificated relief teachers working in services on pay parity rates would also need to be paid at least at the appropriate pay step for their qualifications and experience.
- Specifying that a pay step must be paid as unencumbered base salary, not as, for example, in-kind or at-risk remuneration.
- The qualification, recognition of certificated teaching (time) and prior relevant work experience requirements in the kindergarten teachers' collective agreement will determine the appropriate pay step placement for each teacher.

Recommended Actions

The Ministry of Education recommends you:

- note** that the passing of the Education and Training (Grants – Budget Measures) Amendment Bill confirms you have the power to set conditions on funding to enable the pay parity initiative (the initiative) announced at Budget 2021;
- note** that you have asked for advice on the implications of reducing the number of pay steps required when opting into higher pay parity rates from six to five and requiring a sixth step at a later date;
- note** the advantages of requiring five steps are that it would likely enable more services to opt in, and reduce internal pay relativities;
- note** the disadvantages are that it will limit the opportunity for parity for a group of teachers who are reasonably experienced, but relatively lowly paid, and opting in will be influenced by service understanding of arrangements relating to the sixth step requirement;

EITHER

- agree** that the initiative requires the first six pay steps of the Kindergarten Teachers, Head Teachers and Senior Teachers Collective Agreement (KTCA) for the opt-in funding rates announced at Budget 2021;

Agree / Disagree

OR

- agree** that the initiative require the first five pay steps of the KTCA for the opt-in funding rates announced at Budget 2021, with the sixth pay step required from 1 January 2023;

Agree / Disagree

- g. **direct** officials, if agreeing to recommendation f, to prepare a paper seeking Cabinet agreement, with agreement required by 20 August 2021 to allow services time to opt in;

Agree / Disagree

- h. **agree** that progression between pay steps in services opting into the initiative should be contingent on teachers working 2080 hours at their existing pay step and currently meeting the Teaching Council of Aotearoa New Zealand's *Standards | Ngā Paerawa*;

Agree / Disagree

- i. **agree** that services opting into the initiative should be expected to include payment of compulsory Kiwisaver employer contributions on top of the designated pay step amounts;

Agree / Disagree

- j. **agree** that the funding condition should allow services not opting in to negotiate the treatment of the Kiwisaver employer contribution against salary with teachers as both parties see fit;

Agree / Disagree

- k. **agree** that the initiative is limited to certificated teachers *not* in a formal management, service leader or specialist role

Agree / Disagree

- l. **agree** that relief teachers working in services that have opted in to pay parity rates should be paid no less than the appropriate pay step for their experience and qualifications;

Agree / Disagree

- m. **agree** that each pay step must be paid as unencumbered base salary, not as, for example, in-kind benefits or at-risk remuneration;

Agree / Disagree

- n. **note** that services will opt in through an attestation process

- o. **agree** that the qualification, recognition of certificated teaching (time) and prior relevant work experience requirements in the KTCA will determine the appropriate pay step placement for each teacher;

Agree / Disagree

- p. **note** that disputes that may arise in relation to application of the requirements in recommendation o are likely to prove a challenging area for the Ministry to manage, given these disputes are of a primarily employment relations, rather than education nature;

- q. **not release** this report until the funding conditions decisions are promulgated in the ECE Funding Handbook.

Release / Not release



Dr Andrea Schöllmann
Deputy Secretary
Education System Policy

17 / 07 / 2021

Hon Chris Hipkins
Minister of Education

____/____/____

Background

- 1 Moving towards pay parity between education and care teachers and kindergarten teachers is one of the Government's priorities through its inclusion in the 2020 Labour election manifesto. It is also reflected in Action 3.4 of the Early Learning Action Plan 2019-29. You have prioritised pay parity for Budgets 2021-23 [METIS 1244367 refers].
- 2 In Budget 2020, Cabinet agreed to funding of \$151 million over four years delivered through increased education and care service funding rates. This was intended to increase the minimum teacher salary attestation level and improve teacher pay generally.
- 3 In Budget 2021, Cabinet agreed to further pay parity funding - \$170 million over four years. You announced this funding on 12 May 2021. The funding is being disbursed in two parts:
 - an increase in education and care funding rates on 1 July 2021, along with an increase in the required minimum salary to be paid to certificated teachers and
 - the provision of pay parity funding rates from 1 January 2022 for services that agree to pay certificated teachers on the first six steps of the Kindergarten Teachers, Head Teachers and Senior Teachers Collective Agreement (KTCA) commensurate with set qualifications and experience.
- 4 As part of the May Budget announcement, you set out the shape of the funding conditions for the January 2022 pay parity initiative (the initiative). These were to be confirmed once the Education and Training (Grants – Budget Measures) Amendment Bill (the Bill) passed. The Bill has now received Royal assent. This means you have clear authority to make funding conditions primarily targeted at achieving employment relations aims such as pay parity.
- 5 This report seeks to confirm the funding conditions needed to implement the initiative. These conditions are created under your amended powers in section 548(5) of the Education and Training Act 2020. These need to be specified in writing in the ECE Funding Handbook no later than 19 September 2021.

Conditions of the pay parity initiative

Pay steps required for services opting into the higher parity funding rates

- 6 In March 2021, we indicated that the \$170 million four-year cost for requiring six pay steps was our best estimate of the sector cost of moving every teacher currently below the first six KTCA pay steps to the steps that match with the experience and qualifications set in the KTCA [METIS 1255414 refers]. The lack of comprehensive sector information prevented confirmation this was the exact amount required.
- 7 Since the Budget announcement, some providers have stated that they would receive insufficient funding to match additional salary costs, if they opted into the initiative.¹ In the March advice we advised you that this would be likely, as allocated funding would result in under and over funding across providers. This is primarily because the ECE funding system is not designed to allocate funding to each service's exact cost structure. Reworking the system to do this is a significant task.

¹ It is also possible that other reasons may add to predictions of losses, for example, including the cost of pay raises to maintain internal salary relativities within a service – these are not factored into the Budget cost.

Reducing the number of pay steps required

- 8 Against this backdrop, you have discussed the possibility of an alternative implementation approach to the initiative. This would see the number of pay steps required when opting in reduced from six to five. The funding rates announced at Budget 2021 would still apply. The five step requirement would be temporary, with the sixth pay step being included at a later date, likely to be 1 January 2023.

Analysis of the reduced pay step approach

- 9 This would enable more services to afford to opt in, at least until the sixth step was required. The Ministry is unable to determine precisely how many more services though, due to unavailability of individual service level data.
- 10 The approach would also somewhat address complaints that the partial parity implementation in Budget 2021 will raise inexperienced teachers' pay too closely to that of team leaders and experienced teachers ie, it will reduce internal pay relativities. In doing so, it should be noted that the reduced step approach will then disadvantage a group of teachers who are reasonably experienced, yet relatively lowly paid.
- 11 The five step option would need to provide more certainty about the settings around the payment of step 6. If not, it is likely services will be cautious opting in. Services have stated that uncertainty about longer term settings play a role in their decision to opt in or out, as does the likelihood that locking pay steps into employment agreements prevents them opting out at a later point.

Cabinet agreement

- 12 On balance, we do not have a preference about whether a five step approach is more favourable than a six step one. It would, however, be necessary for Cabinet to agree to any proposal that reduces the 'amount' of pay parity sought in return for the funding agreed in Budget 2021.
- 13 The timing for Cabinet agreement is especially tight. We consider it would be needed by 20 August 2021 at the latest. This would allow just enough time for student management system providers to update the online forms services will use to notify the Ministry they wish to opt in. There is already a tight timeframe to have these forms finalised in time for the November funding round to ECE services.

Progression between pay steps

- 14 The Budget initiative announcement outlined that progression to the next pay step would be based on a certificated teacher reaching a full-time year of work (2080 hours) at their current pay step. We have received sector feedback suggesting that progression should be left to employers as a necessary tool for enabling performance management of teachers.
- 15 We consider that the progression process ought to be altered. However, we propose this is done by requiring that a teacher must be meeting the appropriate professional standards, that is, the Teaching Council of Aotearoa New Zealand's *Standards | Ngā Paerawa*, before progressing to the next pay step.
- 16 This is consistent with the approach in the KTCA. We consider such consistency is a key principle that needs to underpin the conditions of the pay parity initiative wherever

possible. The proposed approach also avoids arbitrary performance appraisal by linking to the Council's annual appraisal requirement. While there is a risk that employers could pressure their professional leaders to assess teachers as being below the *Standards* in order to stop pay increases, Teaching Council scrutiny is likely to limit this risk.

- 17 Where a teacher is assessed as not meeting the standards, salary step progression would be deferred and a reasonable timeframe agreed between the teacher and employer in which the teacher could be re-assessed. The teacher would progress once they are assessed as meeting the *Standards*.

Kiwisaver employer contributions

- 18 The Ministry has been asked how the employer contribution for Kiwisaver should be treated for services opting into the initiative. The Ministry has never set a clear condition on how the employer contribution fits within the minimum salary attestation, which is a closely related situation. We are aware some services have agreed with teachers that the employer contribution fits within the minimum salary, while others have agreed it is on top of this amount.
- 19 Legally, the employer contribution to Kiwisaver is able to be included within the total remuneration as long as both the employer and employee agree. However, the approach taken by the parties to the KTCA is that the employer contribution is included on top of the pay step base salary.
- 20 We recommend that services opting into the initiative be required to pay any legally required employer contribution on top of the designated pay step amount, in keeping with the principle of maintaining consistency with the KTCA approach.
- 21 The pay parity funding rates announced in Budget 2021 do not reflect the cost of employer Kiwisaver contributions. However, this is no different to the approach taken to calculating the kindergarten funding rates needed to pay for KTCA variations.
- 22 For services not opting into the initiative, we consider it should be left to the employer and employee to decide how the employer contribution is treated, that is, the status quo. This would effectively grandparent existing arrangements and minimise unforeseen financial impacts on employers.

The definition of a certificated teacher

- 23 There is a need for clarity as to whether the pay steps apply to all certificated teachers in a service, regardless of their role. We propose that a funding condition intentionally limits the pay steps to apply to certificated teachers *not* in a formal management, service leader or specialist role.
- 24 This approach targets certificated teachers who work mainly 'on the floor'. This aligns closely with the KTCA. The KTCA defines 'base scale' teachers ie, those who attract the pay steps drawn on for the initiative, as being teachers who are not in more senior positions, specifically senior teachers and head teachers. The latter teachers have considerable leadership and management responsibilities.
- 25 The proposed condition contrasts with the minimum salary attestation, which has always applied to certificated teachers regardless of their actual role. This wider definition would continue for services not opting into the pay parity rates.

- 26 Our proposal could leave an unknown number of staff, likely to be mainly those in team leader roles, temporarily losing pay relativity with staff below them in the service hierarchy. We consider the issue of senior staff pay will need to be considered in the next tranche of pay parity funding. The Budget 2021 funding does not factor in pay step movement for those in predominantly leadership and management roles.

Application of pay steps to certificated teachers working as relievers

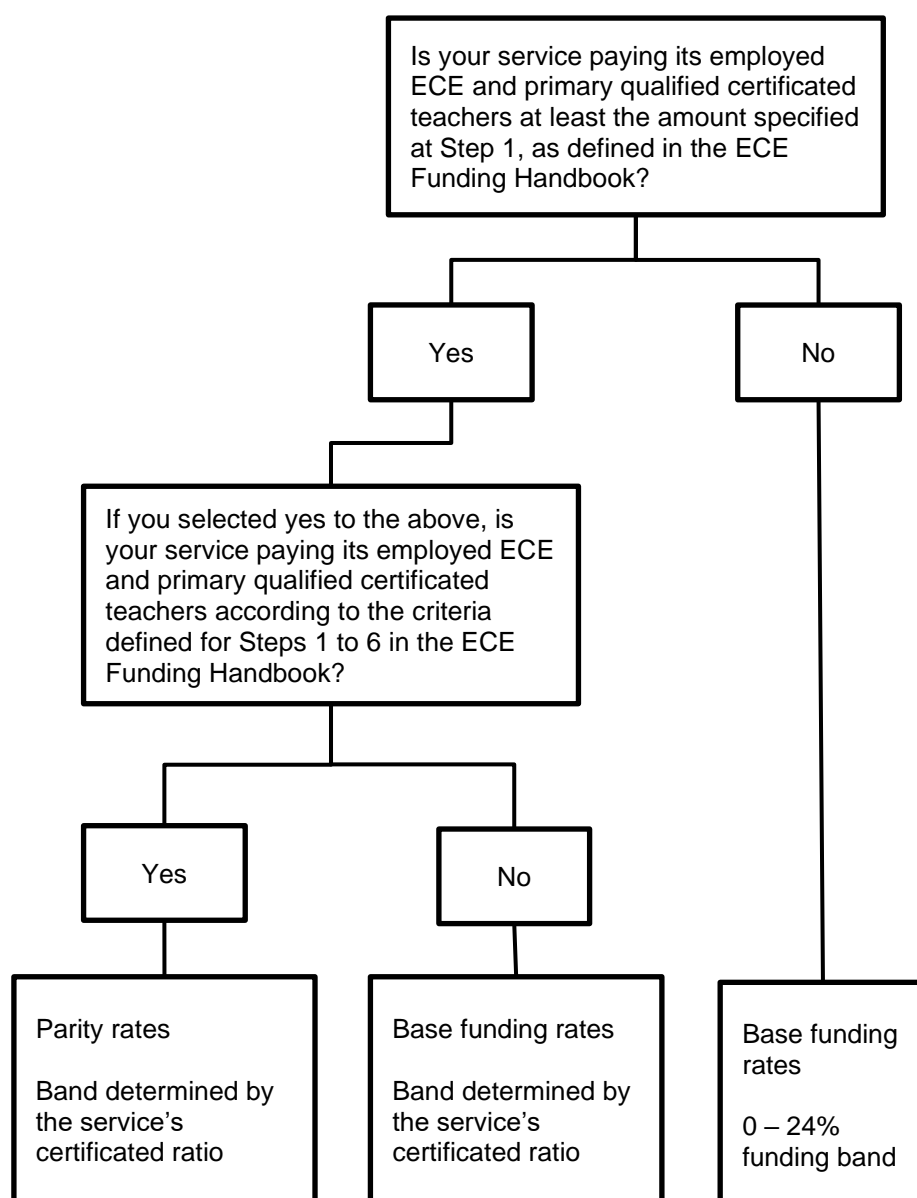
- 27 Many services rely on relief teachers for at least some of their staffing requirements. Relief teacher pay may be determined directly by a service (if running its own reliever pool) or by agreement with a reliever agency. We propose that relievers working in services that opt into the initiative will also need to be paid at least at the appropriate pay step. This is because the pay parity funding rate has been calculated as if every certificated teacher working in the service is eligible for the appropriate pay step.

Pay steps are base pay

- 28 The Ministry recommends that a funding condition be clear that a pay step must be paid as unencumbered base salary. This means that any additional pay required for that employee to reach the requisite pay step could not be offered as an 'at risk' or time-limited amount. We also consider that the base salary should not include non-cash or in-kind benefits such as parking, particularly as these arrangements can lead to higher tax rates and reduce the effective value of the base salary to the employee. Again, this recommendation is also consistent with the KTCA.

What the opt in process involves

- 29 The opt-in process for the parity rates requires a service to answer two attestation questions as part of their RS7 return. These attestation questions will allow a service to confirm what salary criteria it has met during the RS7 return period.
- 30 For the first attestation question, a service will be asked to confirm whether it is meeting the minimum salary requirement for all its employed certificated teachers. If a service answers 'Yes' to this question, it will be eligible to receive funding rates based on the proportion of certificated teachers used. If a service answers 'No' it will be funded on the 0 – 24% base funding rate and will not be required to complete the second attestation question.
- 31 The second attestation question requires a service to confirm whether it is paying its employed certificated teachers according to the salary scale (the KTCA steps) that will be defined in the ECE Funding Handbook. If a service answers 'Yes' to this question, it will be eligible to receive the parity funding rates. If a service answers 'No', it will be eligible to receive base funding rates.
- 32 The following chart details how the combination of answers to the attestation questions would be used to determine a service's funding rate. The questions described are only indicative of what a service may be asked when completing their RS7 return.



- 33 Services would be able to opt out by selecting 'No' to the second attestation as per the process described above. Attestations are reconfirmed every four months, so opting out would be possible at these intervals. In general though, the inclusion of pay step arrangements in employment agreements would mean that services have limited scope to opt out because the costs continue under employment agreements.

Publication of names of services that opt in

- 34 Details of all services' answers to the attestation questions will be published by the Ministry each funding round. Access to this information will provide clarity to teachers regarding the funding conditions their employer has agreed to when completing their RS7 return.

Ascertaining and agreeing on requirements for pay step placement

- 35 The final condition to be confirmed is that qualification, recognition of certificated teaching (time) and prior relevant work experience requirements² in the KTCA are to be used to determine the appropriate pay step for each teacher. The application of these is important to produce fidelity with kindergarten teachers' pay arrangements.
- 36 We note that resolution of issues between a teacher and their employer is likely to be a challenging area for the Ministry. This is because some of the disputes will be employment disputes about employment agreements, which are arguably best resolved via the institutions and processes in Part 10 of the Employment Relations Act 2000 (ERA).
- 37 It is likely, however, that the Ministry will be expected to resolve such issues in the first instance, partly because Ministry intervention is generally quicker and cheaper than ERA processes. Also, in some cases the dispute may relate only to a funding condition – it may not have flowed into a change to an employment agreement.
- 38 Funding for the initiative provides extra resource for auditing of compliance against funding conditions. This resource will help the Ministry work with services and teachers to resolve these issues. Resolution will also require a range of strategies. These are likely to include provision of services and teachers with relevant information, advice about whether the issue is best treated as an employment dispute under the ERA, and giving services the ability to take corrective action where there is clear funding non-compliance before any audit adjustments to funding are applied.

Proactive Release

- 39 We recommend that this Education Report is not considered for release until the funding conditions are confirmed in the ECE Funding Handbook.

² There are a range of work areas specified in the KTCA for which time spent shall be recognised such that a teacher can be placed at a higher pay step than their certificated service time indicates (up to a limit of two pay steps).